**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 85 OF 2005**

Smt. Yamunabai Daji Patil & anr. ... Appellants (Ori.Plaintiffs)

V/s

Shri Sadu Amba Bhagat & anr. ... Respondents

Shri Rajiv Patil for the appellants.

Mr. Amol P. Mhatre for respondents.

**CORAM: P.V. KAKADE, J.**

**DATED: 30TH JUNE, 2005**

**P.C.:**

1. This is an appeal preferred against the judgment and order passed by the Addl. District Judge, Thane, dated 16.12.2004 allowing the appeal and setting aside the judgment and decree passed by the Civil Judge, Jr.Divn., Thane, decreeing the suit for declaration and injunction.

2. I have heard the learned counsel for both parties. Perused the record made available by the concerned parties.

3. The suit was filed for declaration that the plaintiffs were in possession and owners of the property bearing Survey No. 71 Hissa No.1 part, admeasuring 52 Ares situated at village Kawad Khurd, Tal. Bhiwandi, Dist. Thane and, therefore, the defendants had no right, title and interest in the suit land and hence the perpetual injunction was also sought for. According to the plaintiffs, they were owners and in physical possession of the property which was purchased by one Daji Patil under the provisions of the B.T. & A.L. Act. Daji Patil died on 2.1.1988 and after his death, the plaintiffs being the legal heirs of said Daji Patil, became owners and were in possession and cultivating the suit land. According to them, the defendants had no concern of whatsoever nature with the suit property and they have threatened the possession and hence the suit was filed.

4. The defendants appeared and contested the suit with contention that they were in actual physical possession of the suit property by virtue of agreements of sale Exh.77 and 86 on record and hence the suit was sought to be dismissed.

5. At the outset, it may be noted that there is

absolutely no substantial question of law involved in this appeal and the dispute is adjudicated by both the Courts below on the basis of available factual record. No doubt, the learned Trial Judge came to the conclusion that the plaintiffs' suit deserves to be decreed on the ground that they were found in physical possession of the property and, therefore, it was held that defendants were obstructing their possession. However, the lower appellate Court Judge, on scrutiny of the evidence, came to the conclusion that the actual possession of the suit property was handed over to the defendants at the time of execution of the agreement of sale in respect of the suit property. In order to satisfy myself, I have perused the copies of the said documents which are the foundation of the suit and recitals thereof in clear terms show that the possession of the suit property is in fact handed over to the defendants at the time of execution of the agreement of sale. This was the finding recorded by the lower appellate Court which is a finding of fact and, therefore, I am inclined to hold that the appreciation of the evidence made by the lower appellate Court Judge appears to be proper, correct and, therefore, it would brook no interference.

In the result, the appeal stands dismissed with no order

as to costs. Consequently, the Civil application No. 139 of 2005 also stands dismissed with no order as to costs.

6. At this stage, the leatrned counsel for the appellants prayed for continuance of earlier order of status-quo for some period. In view of the facts and circumstances, the earlier order of status-quo with regard to the suit property shall stand continued for a period of four weeks.

.....